

Federal Acquisition Regulation

49.112-1

TCO shall specify the factors considered for each item. If the settlement was negotiated on an overall lump-sum basis, the TCO need not evaluate each item or group of items individually, but shall support the total amount of the recommended settlement in reasonable detail. The memorandum shall include explanations of matters involving differences and doubtful questions settled by agreement, and the factors considered. The TCO should include any other matters that will assist reviewing authorities in understanding the basis for the settlement.

[48 FR 42447, Sept. 19, 1983, as amended at 56 FR 67135, Dec. 27, 1991; 62 FR 51271, Sept. 30, 1997]

49.111 Review of proposed settlements.

Each agency shall establish procedures, when necessary, for the administrative review of proposed termination settlements. When one agency provides termination settlement services for another agency, the agency providing the services shall also perform the settlement review function.

49.112 Payment.

49.112-1 Partial payments.

(a) *General.* If the contract authorizes partial payments on settlement proposals before settlement, a prime contractor may request them on the form prescribed in 49.602-4 at any time after submission of interim or final settlement proposals. The Government will process applications for partial payments promptly. A subcontractor shall submit its application through the prime contractor which shall attach its own invoice and recommendations to the subcontractor's application. Partial payments to a subcontractor shall be made only through the prime contractor and only after the prime contractor has submitted its interim or final settlement proposal. Except for undelivered acceptable finished products, partial payments shall not be made for profit or fee claimed under the terminated portion of the contract. In exercising discretion on the extent of partial payments to be made, the TCO shall consider the diligence of the contractor in settling with subcontractors

and in preparing its own settlement proposal.

(b) *Amount of partial payment.* Before approving any partial payment, the TCO shall obtain any desired accounting, engineering, or other specialized reviews of the data submitted in support of the contractor's settlement proposal. If the reviews and the TCO's examination of the data indicate that the requested partial payment is proper, reasonable payments may be authorized in the discretion of the TCO up to—

(1) 100 percent of the contract price, adjusted for undelivered acceptable items completed before the termination date, or later completed with the approval of the TCO (see 49.205);

(2) 100 percent of the amount of any subcontract settlement paid by the prime contractor if the settlement was approved or ratified by the TCO under 49.108-3(c) or was authorized under 49.108-4;

(3) 90 percent of the direct cost of termination inventory, including costs of raw materials, purchased parts, supplies, and direct labor;

(4) 90 percent of other allowable costs (including settlement expense and manufacturing and administrative indirect costs) allocable to the terminated portion of the contract and not included in subparagraphs (1), (2), or (3) above; and

(5) 100 percent of partial payments made to subcontractors under this section.

(c) *Recognition of assignments.* When an assignment of claims has been made under the contract, the Government shall not make partial payments to other than the assignee unless the parties to the assignment consent in writing (see 32.805(e)).

(d) *Security for partial payments.* If any partial payment is made for completed end items or for costs of termination inventory, the TCO shall protect the Government's interest. This shall be done by obtaining title to the completed end items or termination inventory, or by the creation of a lien in favor of the Government, paramount to all other liens, on the completed end items or termination inventory, or by other appropriate means.

(e) *Deductions in computing amount of partial payments.* The TCO shall deduct from the gross amount of any partial payment otherwise payable under 49.112-1(b)—

(1) All unliquidated balances of progress and advance payments (including interest) made to the contractor, which are allocable to the terminated portion of the contract; and

(2) The amounts of all credits arising from the purchase, retention, or sale of property, the costs of which are included in the application for payment.

(f) *Limitation on total amount.* The total amount of all partial payments shall not exceed the amount that will, in the opinion of the TCO, become due to the contractor because of the termination.

(g) *Effect of overpayment.* If the total of partial payments exceeds the amount finally determined due on the settlement proposal, the contractor shall repay the excess to the Government on demand, together with interest. The interest shall be computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2) from the date the excess payment was received by the contractor to the date of repayment. However, interest will not be charged for any (1) excess payment attributable to a reduction in the settlement proposal because of retention or other disposition of termination inventory, until 10 days after the date of the retention or disposition, or a later date determined by the TCO, or (2) overpayment under cost-reimbursement research and development contracts without profit or fee if the overpayments are repaid to the Government within 30 days after demand.

(h) *Certification and approval of partial payments.* (1) The contractor shall place the following certification on vouchers or invoices for partial payments:

The payment covered by this voucher is a partial payment on the Contractor's settlement proposal under contract No. _____ made under part 49 of the Federal Acquisition Regulation.

(2) The TCO shall approve the invoice or voucher by noting on it the following:

Payment of \$ _____ is approved.

49.112-2 Final payment.

(a) *Negotiated settlement.* After execution of a settlement agreement, the contractor shall submit a voucher or invoice showing the amount agreed upon, less any portion previously paid. The TCO shall attach a copy of the settlement agreement to the voucher or invoice and forward the documents to the disbursing officer for payment.

(b) *Settlement by determination.* If the settlement is by determination and—

(1) There is no appeal within the allowed time, the contractor shall submit a voucher or invoice showing the amount determined due, less any portion previously paid; or

(2) There is an appeal, the contractor shall submit a voucher or invoice showing the amount finally determined due on the appeal, less any portion previously paid. Pending determination of any appeal, the contractor may submit vouchers or invoices for charges that are not directly involved with the portion being appealed, without prejudice to the rights of either party on the appeal.

(c) *Construction contracts.* In the case of construction contracts, before forwarding the final payment voucher, the contracting officer shall ascertain whether there are any outstanding labor violations. If so, the contracting officer shall determine the amount to be withheld from the final payment (see subpart 22.4).

(d) *Interest.* The Government shall not pay interest on the amount due under a settlement agreement or a settlement by determination. The Government may, however, pay interest on a successful contractor appeal from a contracting officer's determination under the Disputes clause at 52.233-1.

49.113 Cost principles.

The cost principles and procedures in the applicable subpart of part 31 shall, subject to the general principles in 49.201, (a) be used in asserting, negotiating, or determining costs relevant to termination settlements under contracts with other than educational institutions, and (b) be a guide for the negotiation of settlements under contracts for experimental, developmental, or research work with educational institutions (but see 31.104).